



Fair Defense Law

A Primer for Texas Officials

www.tidc.texas.gov





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Mission Statement

The Texas Indigent Defense Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

Who We Are

In January 2002, the Fair Defense Act became effective after its passage by the 2001 Texas Legislature. This law established the Texas Task Force on Indigent Defense (Task Force) as a permanent standing committee of the Texas Judicial Council, staffed as a component of the Office of Court Administration. During the 82nd Legislative Session (2011), Governor Rick Perry signed House Bill 1754 into law, establishing the Texas Indigent Defense Commission (Commission), the permanent organization that renamed and replaced the Task Force. The Commission and its staff provide funding through grants, technical assistance, and online resources to assist counties to maintain, establish, and develop cost-effective indigent defense systems. The program is led by the Honorable Sharon Keller, Presiding Judge, Court of Criminal Appeals. The Commission is a body of thirteen appointed and ex-officio members (see URL: <http://tidc.texas.gov/commission/members.aspx>) supported by eleven full-time staff members.

Strategic Plan and Goals

The Commission and its staff are guided by its *Strategic Plan 2010-2015* (URL: <http://tidc.texas.gov/media/966/strategicplanfinal.pdf>) and three distinct but related goals. The first goal relates to the development of policies, guidelines, model forms, best practices, and legislative recommendations to improve or sustain effective indigent defense practices. The next goal embraces the concept of local control. The Commission understands indigent defense services are provided and funded in large part at the local level. To honor the tenets of local control, the Commission applies evidence-based research to its strategies. By deploying an evidence-based practice strategy, the Commission is able to provide local and state officials with solid information to make informed decisions about indigent defense practices. This approach places the knowledge in the hands of those responsible for providing these services, as well as state policy makers. Knowledge rather than anecdotes drives decision making. The desired result is a more cost-effective indigent defense delivery system that meets the needs of the local jurisdictions while fulfilling the requirements of state and constitutional law. The third goal pertains to developing effective funding strategies to allocate state funds in a fair and equitable manner, and provide information to counties on effective programs.

Formula and Discretionary Grant Program

Last year, the Commission awarded over \$43 million in grants to counties through two funding strategies. One program—which has benefitted all counties—provides formula-based grants throughout Texas. The other offers discretionary funding to implement innovative programs or remedy compliance issues. Counties are eligible for a formula grant if certain basic requirements are met. Formula grants are based on a combination of county population and indigent defense expenditures. The Discretionary Grant program requires that a county complete an application and explain to the Commission what type of program it wants to implement and how the program will improve local public defense practices. These applications are scored and awarded annually on a competitive basis. The Commission also has the discretion to provide funds to assist a local jurisdiction with a challenge in complying with the Fair Defense Act, to provide technical support, and to assist counties that demonstrate an overwhelming economic hardship related to indigent defense. (See Formula Grants URL: <http://tidc.texas.gov/grants-reporting/formula.aspx> and Discretionary Grants URL: <http://tidc.texas.gov/grants-reporting/discretionary.aspx>.)

Fiscal and Policy Monitoring Program

The Commission is required by Texas Government Code section 79.037(a)(3) to monitor counties that receive a grant to ensure state money is being properly spent and accounted for and to enforce compliance by the county with the conditions of the grant, including state law.

The Uniform Grant Management Standards and grant rules set the monitoring criteria and priorities for counties. Fiscal monitoring is conducted to ensure that state funds are being properly spent on authorized indigent defense expenditures. The fiscal monitor focuses on the finances of the county where as the policy monitor reviews local practices through in-court observation, interviews, and examination of records to determine how well jurisdictions meet the requirements of the Fair Defense Act and Commission policies. In general, jurisdictions are checked to ensure the following: that Article 15.17 hearings are held within 48 hours of arrest and defendants are able to request counsel at the hearing; that the county's indigent defense plan sets a financial standard of indigence in compliance with Article 26.04 of the Code of Criminal Procedure; that the jurisdiction has a method for tracking continuing legal education (CLE) hours of attorneys on the appointment list; that counsel is appointed within statutorily required times; that appointments are distributed in a fair, neutral, and non-discriminatory manner; and that attorneys are paid according to a standard payment process. (See Fiscal Monitoring URL: <http://tidc.texas.gov/monitoring/fiscal-monitoring.aspx> and Policy Monitoring URL: <http://tidc.texas.gov/monitoring/policy-monitoring.aspx>.)

Ten Key Provisions of Fair Defense Law

1. *Magistrate Responsibilities.* The magistrate is required to admonish the accused of his constitutional rights and set bail. In addition, the magistrate must: 1) inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel; 2) inquire as to whether accused is requesting that counsel be appointed; and 3) provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing. The magistrate must also record the following: 1) the date and time the accused was arrested and the date and time when he/she was brought before the magistrate; 2) whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel; and 3) whether the accused requested appointment of counsel.

- See Conduct Prompt and Accurate Magistration Proceedings
(URL: <http://tidc.texas.gov/policies-standards/model-forms-procedures.aspx>.)

2. *Indigence Determination/Consideration of Bail.* The defendant's ability to post bail may not be considered apart from the defendant's actual financial circumstances (i.e., the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant). A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel. The local indigent defense plan, which is discussed in more detail below, must include financial standards for determining whether a defendant is eligible to receive appointed counsel. "Indigent" means a person who is not financially able to employ counsel. Every effort should be made to follow the indigence standard in the applicable local plan.

- See Eligible for Justice: Guidelines for Appointing Defense Counsel, The Brennan Center, September 2008 (URL: <http://www.brennancenter.org/publication/eligible-justice-guidelines-appointing-defense-counsel>)
- Task Force Supplement to the Verification Study (November 2007) (URL: <http://tidc.texas.gov/media/27395/supplement-to-verification-study-final.pdf>).

3. Waiver of Counsel Provisions. In 2007, the Texas Legislature promulgated procedures for obtaining waivers of the right to counsel from defendants. It also imposed limits on when prosecutors may speak with unrepresented defendants and when judges may direct such defendants to speak with prosecutors. Under the law a judge or magistrate may not order a defendant rearrested or require another, higher bond because a defendant withdraws a waiver of counsel or requests the assistance of counsel.

- See an [overview of the changes](http://tidc.texas.gov/media/30134/HB-1178ImplementationFINAL.pdf) (URL: <http://tidc.texas.gov/media/30134/HB-1178ImplementationFINAL.pdf>)
- And [flowcharts depicting the steps](http://tidc.texas.gov/media/30131/HB-1178-flowchart-FINAL.pdf) in the process are available (URL: <http://tidc.texas.gov/media/30131/HB-1178-flowchart-FINAL.pdf>).

4. Time-frames for Appointment of Counsel. The judge (or designee) must rule on requests for counsel and appoint counsel to indigent defendants within one working day of receiving requests in counties of 250,000 or more or three working days in counties of less than 250,000. Persons out of custody: counsel must be appointed at defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first (see Article 1.051(j), and *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008)).

- See *U.S. Supreme Court Decision on Rothgery – What Does It Mean?* (URL: <http://youtu.be/xbHWnuu5T8A?list>).

5. Attorney Selection Methodology. The local indigent defense plan must include the method by which attorneys on the appointment lists are assigned to cases. For example, in many counties the plan provides that judges will make appointments in rotation order from the appointment list. Every effort should be made to follow the applicable local plan.

- See presentation: [The Four Types of Defense Delivery Systems.](#)

6. Attorney Fees. All court appointed attorney fees must be paid in accordance with a schedule of fees adopted by formal action of the local judges. If a judge disapproves an attorney's fee request, the judge must make written findings stating the amount approved and the reason for disapproving the requested amount. The attorney may appeal to the presiding judge of the administrative judicial region.

7. Experts and Investigators. The Fair Defense Law requires reimbursement of expert and investigative expenses with and *without* prior court approval if they are reasonably necessary and reasonably incurred.

8. Indigent Defense Expenditure Report (IDER). Texas Government Code Section 79.036(e) requires that all Texas counties report amounts spent on attorney fees, licensed investigators, expert witnesses, and other direct litigation costs. The Commission allows counties to capture and report the administrative costs directly associated with providing indigent defense in the county. A comprehensive set of instructions and definitions is provided in the Procedure Manual for the Indigent Defense Expenditure Report.

- The manual is available at URL:
<http://www.tidc.texas.gov/media/25884/FY2014IDERManualFinalRevised0912.pdf>.
- Copies of the IDER are posted on the data website of the Commission at URL:
<http://tidc.tamu.edu/public.net/>.

9. Attorney Caseload and Practice Time Reports. Beginning in 2014, the Texas Legislature requires all attorneys who accept appointments in adult criminal and juvenile delinquency cases to submit an annual statement by October 15 that describes the percentage of their practice time that is dedicated to work on those appointed cases. Attorneys may make the report directly to the Commission via an online portal. Each county must also annually report by November 1 with its IDER, the number of cases handled by each attorney for the preceding fiscal year along with the amount paid.

10. Adult and Juvenile Local Indigent Defense Plan Report. The Fair Defense Act requires the criminal court judges and juvenile board in each county to adopt and publish county-wide indigent defense plans. Government Code Section 79.036 requires that each county submit to the Commission its countywide indigent defense plans, procedures and forms on how it will provide court appointed counsel to eligible persons. These reports must be submitted by November 1 of odd-numbered years.

- Copies of the plan should be available locally and also on the data website of the Commission at URL: <http://tidc.tamu.edu/public.net/>.
- For information on the requirements for juvenile courts, see [Indigent Defense in the Texas Juvenile Justice System](#) - A Joint Report by the Commission and the Texas Juvenile Justice Department (July 2014) at URL:
<http://www.tidc.texas.gov/resources/publications/general/indigent-defense-in-the-texas-juvenile-justice-system.aspx>.

ABA's Ten Principles of a Public Defense Delivery System

URL:http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/s_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf

- 1. The public defense function, including the selection, funding, and payment of defense counsel is independent.*
- 2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.*
- 3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.*
- 4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.*
- 5. Workload is controlled to permit the rendering of quality representation.*
- 6. Defense counsel's ability, training, and experience match the complexity of the case.*
- 7. The same attorney continuously represents the client until completion of the case.*
- 8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.*

9. *Defense counsel is provided with and required to attend continuing legal education.*
10. *Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.*

Additional Online Resources

To promote best practices and accountability, the Commission serves as a clearinghouse of indigent defense information via its website. The public has access to all county plans, expenditures, guides, model forms, rules, publications, e-newsletters and press releases. Visit our website at www.tidc.texas.gov for more information.

Fair Defense Law Codified:

URL: http://www.tidc.texas.gov/media/17773/FDACodified2013FINAL_Revised.pdf.

Trainings:

A video download of the 2013 Indigent Defense Workshop is available at URL: <http://tidc.texas.gov/resources/training/2013-indigent-defense-workshop.aspx>.

Legislative Information:

A list of Commission recommendations for the 84th Legislature and the Commission's Legislative Policy are available at URL: <http://tidc.texas.gov/policies-standards/legislative-information.aspx>.

Other Organizations:

American Bar Association (ABA): Standing Committee on Legal Aid and Indigent Defendants-- *Assisting in the reform and improvement of indigent defense systems across the country.* URL: <http://www.abanet.org/legalservices/sclaid/defender/>.

National Association for Public Defense (NAPD): Organization of public defense professionals working to improve indigent defense system. URL: <http://www.publicdefenders.us/>.

National Legal Aid and Defender Association (NLADA): *Equal Justice. Of the People. For the People.* URL: <http://www.nlada.org/Defender>.

State Bar of Texas Legal Services to the Poor in Criminal Matters:

URL:

<http://www.texasbar.com/Content/NavigationMenu/ForLawyers/Committees/CriminalMatter.htm>.

Texas Fair Defense Project: Works to improve the fairness and accuracy of the criminal justice system in Texas, with a primary focus on improving access to counsel and the quality of representation provided to poor people accused of crime.

URL: <http://www.texasfairdefenseproject.org/>.

U.S. Department of Justice National Symposium on Indigent Defense Washington, D.C. February 2010 – see all presentations at URL: <http://www.nij.gov/topics/courts/indigent-defense/Pages/indigent-defense-symposium-2011.aspx>.

18 Public Defender Offices in Texas (updated January 6, 2015)						
County Grantee	Program Name	Service	Date Est.	Address	Phone	Other Counties
Bee	Bee County Regional Public Defender	Regional, Felony, Misdemeanor	2009	311A N. Washington Street, Beeville, TX 78102	361.358.1925	Live Oak, McMullen
Bexar	Bexar County Appellate PDO	Felony Appellate, Misdemeanor Appellate, Juvenile Appellate	2005	Paul Elizondo Tower, 101 W. Nueva Street, Suite 310, San Antonio, TX 78205	210.335.0701	
	Bexar County Mental Health PDO	Misdemeanor Mental Health		300 Dolorosa, Suite B032, San Antonio, TX 78205	210.335.0827	
Bowie	Bowie County and Red River County Regional PDO	Regional, Felony, Misdemeanor	2008	424 W. Broad Street, Texarkana, TX 75501	903.792.2012	Red River
Burnet	Burnet County Public Defender Office	Felony, Misdemeanor	2012	1008 N. Water Street, Burnet, TX 78611	512.234.3061	
Cameron	Cameron County Juvenile PDO	Juvenile	1999	P. O. Box 1690, San Benito, TX 78586	956.399.3075	
Colorado	Colorado County Public Defender	Felony, Misdemeanor, Juvenile	1987	316 Spring Street, Room 104, Columbus, TX 78934	979.732.9425	

Dallas	Dallas County PD	Capital, Felony, Misdemeanor, Juvenile	1983	133 N. Riverfront Blvd., 9 th Floor, Dallas, TX 75207	214.653.3550	
Dickens	Caprock Regional Public Defender Office	Regional, Felony, Misdemeanor, Juvenile	2011	P. O. Box 45047 Lubbock, TX 79409	806.742.2570	Armstrong, Briscoe, Cottle, Dawson, Dickens, Floyd, Gaines, Hardeman, Kent, King, Knox, Motley, Stonewall, Swisher
El Paso	El Paso County Public Defender Office	Capital, Felony, Misdemeanor, Juvenile	1987	500 E. San Antonio Street, #501, El Paso, TX 79901	915.546.8131	
Fort Bend	Fort Bend County Mental Health Defender Program	Felony Mental Health, Misdemeanor Mental Health	2010	900 Morton Street, Richmond, TX 77469	281.238.3050	
Harris	Harris County Public Defender	Felony, Juvenile, Felony Appellate, Misdemeanor Appellate, Misdemeanor Mental Health	2011	1201 Franklin, 13 th Floor, Houston, TX 77002	713.368.0016	
Hidalgo	Hidalgo Public Defender Office	Felony, Misdemeanor, Juvenile	2005	100 E. Cano, Suite 206, Edinburg, TX 78539	956.292.7040	
Kaufman	Kaufman County Public Defender Office	Felony, Misdemeanor	2007	205 South Jackson, Kaufman, TX 75142	972.932.0248	
Lubbock	Regional Public Defender for Capital Cases	Regional, Capital	2008	916 Main Street, Suite 206, Lubbock, TX 79401	806.775.5650	Serving 1 st , 2 nd , 3 rd , 4 th , 6 th , 7 th , 8 th and 9 th Judicial Regions
Travis	Travis County Juvenile PDO	Juvenile	1971	2201 Post Road, Suite 103, Austin, TX 78704	512.854.4128	
	Travis County Mental Health PDO	Felony Mental Health, Misdemeanor Mental Health	2007	2201 Post Road, Suite 200, Austin, TX 78704	512.854.3030	
Webb	Webb County Public Defender Office	Felony, Misdemeanor, Juvenile	1988, Juv. added 2009	1110 Washington Street, Suite 102, Laredo, TX 78040	956.523.4107 956.523.4101	
Wichita	Wichita County	Felony, Misdemeanor	1989	600 Scott Street, Suite 102, Wichita Falls, TX 76301	940.766.8199	
Willacy	Willacy County PDO	Felony, Misdemeanor	2007	308 E. Harrison Avenue, Harlingen, TX 78550	956.534.4829	

4 Managed Assigned Counsel Programs in Texas (updated January 6, 2015)

County Grantee	Program Name	Service	Date Est.	Address	Phone	Other Counties
Collin	Collin County Mental Health Managed Counsel Program	Felony Mental Health, Misdemeanor Mental Health	2013	2100 Bloomdale Road, Suite 10146, McKinney, TX 75071	972.548.4617	
Lubbock	Lubbock Private Defender Office	Felony, Misdemeanor, Felony Mental Health, Misdemeanor Mental Health	2009	1504 Main Street, Lubbock, TX 79401	806.749.0007	
Montgomery	Montgomery County Managed Assigned Counsel Program	Felony Mental Health, Misdemeanor Mental Health	2011	301 N. Main, Suite 301, Conroe, TX 77301	936.538.8131	
Travis	Capital Area Private Defender Service	Felony, Misdemeanor	2014	816 N. Congress Ave, Suite 700 Austin, TX 78701	512.774.4208	